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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(HOUSTON DIVISION)

MARK NEWBY,	:	Civil Action No. H-01-3624
	:	(Securities Suits)
Plaintiff,	:	
v.	:	Consolidated with: H-01-3630; H-01-3647; H-01-3652; H-01-3660; H-01-3670; H-01-3671; H-01-3681; H-01-3682; H-01-3686; H-01-3717; H-01-3733; H-01-3734; H-01-3735; H-01-3736; H-01-3737; H-01-3789; H-01-3838; H-01-3839; H-01-3889; H-01-3903; H-01-3914; H-01-3993; H-01-4009; H-01-4071; H-01-4106; H-01-4168; H-01-4189; H-01-4198
ENRON CORP. et al.,	:	
Defendants.	:	

DAVIDSON GROUP'S MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS MOTION FOR APPOINTMENT OF LEAD PLAINTIFF AND TO APPROVE SELECTION OF LEAD COUNSEL AND CO-COUNSEL

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Andrew Davidson and Seymour Nebel (the "Davidson Group") submit this memorandum of law in further support of its Motion for Appointment of Lead Plaintiff and for Selection of Lead Counsel and Co-Counsel in these consolidated securities class actions against Enron Corporation ("Enron" or the "Company") and certain other defendants.

PRELIMINARY STATEMENT

The events of the last few weeks regarding several of the institutional investors that are seeking to be appointed as lead plaintiff are shockingly revealing and of deep concern to the individual investors represented by the Davidson Group. Press reports of political ties, connections with banks and investment advisers, motions which reveal nothing of the movants' own conflicts, but highlight the shortcomings of other institutions, and self-serving reformations of proposed lead plaintiff groups can lead this Court to only one conclusion -- thousands of individual investors who have seen their lives and personal portfolios devastated need direct representation in any lead plaintiff structure appointed by the Court. Only the presence of individuals, such as those in the Davidson Group, who are completely independent from the institutions, which all seem to have their drawbacks or skeletons yet to be discovered, will provide comfort to class members that a system that has so widely failed them in the past will not fail them again. Indeed, the regulatory framework of the securities markets, the entire investment community and the market system have failed the individual investor. The "watchdog" for the investors, Arthur Andersen LLP ("Arthur Andersen"), has failed them. Enron's banks and underwriters have failed them. The attorneys, rating agencies, regulatory agencies and securities analysts have all failed them.

The significant events, which have highlighted potential conflicts and appearances of

impropriety with respect to various institutions, that were known or should have been known and disclosed to the Court, include the following:

- The Florida State Board of Administration ("FSBA") used and relied upon an investment adviser that had a managing partner on Enron's Board of Directors;
- The FSBA purchased millions of shares of Enron through this same investment adviser after the initial fraud cases were filed;
- After filing a lead plaintiff motion on its own, and perhaps deciding that its conflicts were a death knell to its seizing control of these cases, FSBA reconstituted its lead plaintiff group by adding an additional proposed lead plaintiff which had previously sought lead plaintiff status on its own;
- Ohio officials, including the Attorney General who filed a lead plaintiff motion with the State Retirement Systems Group, received political donations from Enron's political action committee;
- The Public Employees Retirement System of Ohio, a member of the State Retirement Systems Group, utilizes J.P. Morgan Chase as one of its fund advisers, an investment bank to Enron and an obvious potential defendant in this case;
- The Teachers Retirement System of Georgia, a member of the State Retirement Systems Group, utilizes Banc of America Capital Management as an investment advisor, also an affiliate of a potential defendant in this action; and
- After filing a lead plaintiff motion, The Regents of the University of California reconstituted its lead plaintiff group by dropping all other members and, in particular, Deutsche Asset Management, an affiliate of one of Enron's banks and a potential defendant in this case.

Simply put, what is going on here? After all, it is these same institutions that bought Enron stock when they had a duty to look out for the participants in the plans they were to supervise and administer. Exactly who can be trusted to watch over the hen house? There is no better assurance to the individual investors, who took the brunt of this market fraud, than to be certain everything is being done to aggressively pursue ALL avenues of recovery, with no interference or impediment due to any yet to be disclosed or discovered allegiances or business affiliations.

Having lost over $60,000 each and more than 25% of their respective portfolios, proposed lead plaintiffs Davidson and Nebel submit that institutions having the aforementioned relationships and shifting alliances or allegiances will not fully and fairly represent their interests. Indeed, while one or more of these institutions may represent the class vigorously, even the appearance of such conflicting interests should be avoided. Appointing the Davidson Group as co-lead plaintiffs as part of a combined lead plaintiff group will not only vitiate any concerns regarding the independence of institutions, but provide individual class members with a "watchdog" to substantively participate in and oversee the litigation.

The recent revelations regarding the FSBA and others certainly give the Davidson Group pause. What else may lurk beneath the surface? What other ties may there be between the institutional investors and investment advisers, banks, underwriters, accountants or lawyers? Which other potential defendants may have contributed to campaigns of state officials with responsibilities for the state's investment funds? What are the personal or professional links between trustees of these institutions and potential defendants? What investment relationships are there between these funds and other potential defendants? Which underwriters or banks that are potential defendants also underwrite securities of the governmental entities seeking lead plaintiff status? Undoubtedly, given the ever expanding net cast by Enron's collapse and bankruptcy, the enormous roster of potential

defendants, and the myriad of potential relationships among these persons and institutions, the participation of independent lead plaintiffs (the Davidson Group) together with institutional investors is warranted. The Private Securities Litigation Reform Act of 1995 (the "PSLRA") gives the Court discretion to appoint a lead plaintiff group comprised of various investors. Courts have found that under certain circumstances such a group is preferred. The Davidson Group suggests that the unprecedented and unique circumstances of this litigation warrant a hybrid structure of lead plaintiffs. The integrity of the judicial system should not be called into question the way the integrity of the financial markets has been. Active and meaningful oversight and participation in the prosecution of this litigation should be accorded to the people who personally lost the most - the individual investors.

ARGUMENT

I. CONFLICTS OF INTEREST BETWEEN THE INSTITUTIONAL INVESTORS AND THE CLASS MEMBERS REQUIRE THE APPOINTMENT OF THE DAVIDSON GROUP

The PSLRA requires that the lead plaintiff satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. At this stage of the litigation, adequacy and typicality are the relevant provisions of Rule 23. *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49-50 (S.D.N.Y. 1988). "The adequacy inquiry...'serves to uncover conflicts of interest between the named plaintiffs and the class they seek to represent.'" *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 479-480 (5th Cir. 2001), quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). In this case, even the most perfunctory examination of the institutional investors' adequacy reveals the multitude of conflicts of interest that exist here.

A. The Institutional Investors' Past and Present Relationships with Banks and Investment Advisers Who May Become Defendants in this Action Present a Conflict of Interest

The appointment of an institutional investor as the sole lead plaintiff in this action would

present clear and immediate conflicts of interest due to the institutional investors' ongoing relationships with banks, accountants and investment advisers. These entities may eventually be named as defendants in this action; in addition, these relationships may have influenced the institutional investors' decisions regarding purchases of Enron stock.

One significant conflict of interest that has already come to light is the FSBA's relationship with one of its investment advisers, Alliance Capital Management ("Alliance"). Frank Savage, a senior executive at Alliance, was also a member of the Enron Board of Directors. (*See* Davidson Group's Memorandum of Law in Response to Motions for Appointment of Lead Plaintiff and Selection of Lead Counsel ("Davidson Response") at 9 and The Regents of the University of California's Opposition to the Competing Motions for Lead Plaintiff at 28-29.) In addition, FSBA was purchasing Enron stock even after numerous cases alleging fraud had already been filed. This relationship raises a myriad of questions regarding FSBA's purchases of Enron stock through Alliance during a time that Savage may have known of Enron's fraudulent conduct.

Similarly, Plaintiffs have already pointed out that J.P. Morgan Chase provides investment services for the Public Employees Retirement System of Ohio and that the Banc of America provides investment advice to the Teachers Retirement System of Georgia. (*See* Davidson Response at 9 and Exhibits D and E attached thereto.) These relationships raise additional concerns of potential conflicts of interest.

The facts in this case are only beginning to come to light. It is possible that further investigation will reveal even more common links between the institutional investors and Enron. Courts have recognized the significance of such conflicts when appointing lead plaintiff. In *In re Cendant Corp. Litig.*, 182 F.R.D. 144 (D.N.J. 1998), the court was faced with a similar situation to the one here. In *Cendant*, one of the proposed lead plaintiffs held a substantial financial interest in

a potential defendant, Merrill Lynch, which was involved in underwriting a class of securities at issue in the litigation. The *Cendant* court decided to appoint a separate lead plaintiff to represent the purchasers of those securities because although the proposed lead plaintiff, the CalPERS group, "publicly (and theatrically) pledged to the Court and gallery to pursue any and all viable claims against Merrill Lynch, logic and simple mathematics speak louder. The Court simply does not believe nor find that the CalPERS group can overcome this substantial conflict of interest and fully protect the interests of the Prides-holders." *Id.* at 149. Here, appointment of the Davidson Group as a co-lead plaintiff will eliminate the likelihood that any potential defendant will go unnamed due to pre-existing or continuing relationships with the institutional investors.[1]

B. State Government Officials Who Represent the Institutional Investors May Have Received Campaign Contributions from Enron, Presenting a Conflict of Interest

Enron and many of the parties to this action actively participated in politics, making contributions to various candidates in elections. This monetary support of various state officials presents an unmistakable conflict of interest for those officials, who oversee the funds for the institutional investors that seek to be appointed as lead plaintiffs in this action.

Enron's involvement with the state of Florida presents one example of such a conflict. Florida

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[1] Although it is currently unknown, a full development of the facts may demonstrate that Arthur Andersen has provided accounting or auditing services, if not for the funds that seek appointment as lead plaintiff, for the governmental entities that are associated with the funds. Any relationship with Arthur Andersen would clearly present a conflict of interest. The court in *Adise v. Mather*, 56 F.R.D. 492 (D. Colo. 1972), addressed a similar situation. In that case, the plaintiff shared the same accountant as the defendant corporation, and stated that he would not name the accountant as a defendant in the action. The *Adise* court held that "Without question, there exists a serious conflict of interest between plaintiff and the other members of the class. The Court finds that because of this conflict of interest, the plaintiff has not and cannot fairly and adequately represent the interests of the class." *Id.* at 496.

Governor, Jeb Bush, is one of three trustees of the FSBA. The ties of existing and potential defendants in this case to Governor Bush are very important as, if the FSBA becomes a lead plaintiff here, Governor Bush will be able to influence, if not control, how this case is prosecuted.

It has already been publicly reported that Governor Bush received $6,500 for his 1998 campaign from Enron and Enron officials. In addition, it appears that Governor Bush had other ties to Enron. In November 1999 – in the middle of the class period alleged in this case – Enron officials actually met with Governor Bush to discuss a possible joint venture between Florida and an Enron entity, Azurix. It has been reported:

> Enter Azurix. Last November, company executives met with Governor Bush to try to cash in on the Everglades. They offered to help the state pay its annual $200 million share of the restoration project-- in return for a state permit to sell the water to third parties for up to 30 years.
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> * * *
>
> The Azurix initiative met with withering criticism when it became public last November. Jeb Bush has taken a wait-and-see approach, and for the moment the proposal appears to be on hold. But given Enron's campaign giving, the company may be hoping for a better reception with a Bush in the White House as well as the governor's mansion....

Two Bushes in the Everglades, Mother Jones, July/August 2000 (attached hereto as Exhibit A).

How can a pension fund with the governor as one of just three trustees be placed in control of the prosecution of a multi-billion dollar lawsuit against these entities?

In fact, already in this case, Florida stipulated to a wholly inadequate order with Arthur Andersen regarding Arthur Andersen's destruction of documents. The order limited the time period that Arthur Andersen had to preserve documents – from 1997 to the present – and did not require Arthur Andersen officials to give testimony under oath about its destruction of documents. It was only when the Davidson Group intervened in the motion and insisted on depositions that the court

entered a much broader order – requiring Arthur Andersen to preserve *all* Enron-related documents no matter how old and allowing plaintiffs to take testimony under oath from the key Arthur Andersen officers involved in the document destructions.

Enron's involvement in the state of Ohio presents another example of the conflicts created by Enron's wide-ranging political contributions. Indeed, Enron's political action committee contributed at least $81,025 to Ohio politicians between 1997 and early 2001, largely during the time that Enron was lobbying to deregulate Ohio's energy markets so it could sell electricity there. Stephen Koff and Julie Carr Smyth, *Montgomery, Taft, others got money from Enron*, The Plain Dealer, Jan. 23, 2002 (attached hereto as Exhibit B). Moreover, the Ohio Attorney General, Betty Montgomery, received contributions from Enron supporting her election campaigns in 1998 and 2000. *Id.* Yet, Ms. Montgomery is now involved in this litigation as a representative of the Ohio retirement systems. (*See* Memorandum of Law in Support of the State Retirement Systems Group for the Appointment of Lead Plaintiff and for Approval of Its Selection of Counsel at 15, listing Betty D. Montgomery as "Of Counsel".) These facts clearly call into question whether Ms. Montgomery will vigorously prosecute this action on behalf of the millions of individuals who were harmed by Enron's conduct.

These conflicts go to the very heart of the institutional investors' adequacy to act as a lead plaintiff on behalf of the entire class. To state the obvious – this is a very high-profile case. Enron was the seventh largest corporation in the United States. Its bankruptcy is the largest ever. This suit likely involves the largest securities fraud ever committed – a fraud implicating some of our nation's largest accounting, law and investment banking firms. Public scrutiny of this case will be intense. All courts dealing with the Enron situation must be concerned with appearances. This court must not permit a lead plaintiff structure to be put in place where there is even the appearance of a possible lack of objectivity. Clearly, the individual investors of the Davidson Group will not be subject to any

of these conflicts. Appointment of the Davidson Group will ensure that any past political contributions will not improperly influence the course of this litigation.[2]

II. APPOINTMENT OF THE DAVIDSON GROUP AND AN INSTITUTIONAL INVESTOR AS CO-LEAD PLAINTIFFS IS IDEAL

The fundamental purpose of the PSLRA is clear; it seeks to ensure the best possible representation for class members. "While the legislative history of the PSLRA suggests a desire that institutional investors be preferred as class representatives, not all institutional investors are similarly situated." *In re Oxford Health Plans, Inc., Sec. Litig.*, 182 F.R.D. at 46. Here, the Davidson Group can play an essential role in this litigation that will otherwise go ignored; they can represent the individual investors. Each of the members of the Davidson Group have suffered a relatively huge financial loss, of over 25% of their savings. They clearly have the incentive to actively prosecute this litigation. Further, given the conflicts that each of the institutional investors is subject to, appointment of the Davidson Group together with one of the institutional investors is ideal. The Davidson Group's participation will obviate any appearance or likelihood of impropriety on the part of the lead plaintiffs in this action.

While the lead plaintiff structure advocated by the Davidson Group may not be the norm, it is within the letter and the spirit of the PSLRA, and it is warranted by the extraordinary circumstances of this case. Indeed, in several post-PSLRA class actions, courts have recognized the benefits of

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[2] Whether Arthur Andersen or other defendants gave political contributions to elected officials of the states that seek lead plaintiff status, is, as yet, unknown. However, the presence of the Davidson Group as a co-lead plaintiff will avoid any potential conflicts that might arise in this area.

appointing a hybrid structure like the one suggested here.[3] For example, in *Holley v. Kitty Hawk Inc.*, 200 F.R.D. 275 (N.D. Tex. 2001) (Solis, J.), Judge Solis held that: "The inclusion of one corporation and three individuals helps create balance among the demographics of the lead plaintiff group members, and improves diversity of experience. The Court is not dissuaded by the difference in losses suffered by the proposed lead plaintiffs, since the proposed lead plaintiffs all seek to maximize the class's recovery." *Id.* at 280.

Similarly, in *Yousefi v. Lockheed Martin Corp.*, 70 F. Supp. 2d 1061 (C.D. Cal. 1999), the court found that with "the appointment of one lead plaintiff who is an individual private investor and one lead plaintiff that is an institutional investor, the lead plaintiffs will represent a broader range of shareholder interests than if the Court appointed an individual or an institutional investor alone." *Id.* at 1071. *See also In re Party City Sec. Litig.*, 189 F.R.D. 91, 114 (D.N.J. 1999) ("The substantial financial interest of Krasnow and Slater Asset, combined with the institutional experience of Slater Asset, should enable [them] to withstand any possible usurpation of control by counsel. The appointment of Krasnow and Slater Asset appears to meet one of the goals of the PSLRA–the appointment of both institutional investors...and individual investors with large financial interests...to serve as lead plaintiffs in securities class actions.").

The cases cited by the FSBA and New York City Pension Funds are not to the contrary. (*See* Memorandum of Law of the Florida State Board of Administration and the New York City Pension Funds in Further Support of Their Motion for Appointment as Co-Lead Plaintiffs and in Opposition

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[3] There is also a benefit to having several counsel involved in this litigation. As the *In re Oxford Health Plans* court found, "The use of multiple lead plaintiffs will best serve the interests of the proposed class in this case because such a structure will allow for pooling, not only of the knowledge and experience, but also of the resources of the plaintiffs' counsel in order to support what could prove to be a costly and time-consuming litigation." 182 F.R.D. at 46.

to Other Lead Plaintiff Applications at 31.) First, their characterization of *In re Oxford Health Plans,* 182 F.R.D. 41, is not inconsistent with the Davidson's Group position. In *Oxford*, the court appointed individual investors together with institutional investors because the court found, due to the particular circumstances of the case and the lead plaintiff candidates, this lead plaintiff structure would be most effective. 182 F.R.D. at 45. Here, the Davidson Group contends that the varied conflicts of interest that the institutional investors have may prohibit them from providing adequate representation to the members of the class, and these circumstances favor appointment of the Davidson Group.

Moreover, it is important to note that none of the conflicts present here were an issue in any of the cases cited by the FSBA and New York City Pension Funds. But it is these very conflicts that implicate issues of adequacy and require the appointment of the Davidson Group. Thus, *In re Milestone Scientific Sec. Litig.*, 183 F.R.D. 404 (D.N.J. 1998) and *In re Waste Mgmt.*, 128 F. Supp. 2d 401 (S.D. Tex. 2000) are of little relevance here; adequacy was not challenged in either of those cases. Further, *In re Advanced Tissue Sciences Sec. Litig.*, 184 F.R.D. 346 (S.D. Cal. 1998) is inapposite. In that case, one group of individuals suggested that it be appointed co-lead plaintiff with another group of individuals. The court specifically stated that since both groups were similarly composed, "the appointment of members from both moving groups would not serve to add any new, unrepresented interests to the leadership of this suit." Here, appointment of the Davidson Group along with an institutional investor would achieve the exact "diversity of interests" the *Advanced Tissue* court found to be lacking. *Id. at 351.* Finally, the court in *Gluck v. Cellstar Corp.*, 976 F. Supp. 542, 549-550 (N.D. Tex. 1997)(Buchmeyer, J.) specifically allowed that "Co-lead Plaintiffs might be appropriate in certain situations" although it was not necessary in the particular action before the court.

The PSLRA seeks to provide the best possible representation for the members of the class.

In this action, due to the complicated facts and the many potential conflicts of interest which loom large on the horizon of this litigation, the appointment of the Davidson Group in necessary to assure that the class members receive completely independent and unbiased representation.

CONCLUSION

For the foregoing reasons, the Davidson Group respectfully requests that the Court grant the Davidson Group's motion for its appointment as lead plaintiffs and to approve lead counsel and co-counsel.

Dated: January 26, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 26th day of January, 2002, a true and correct copy of the above and foregoing was served by First Class mail to all parties listed on the attached Service List.

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EXHIBIT A

Outfront

July/August 2000

Home Cheat Home

Tabatha evans didn't set out to buy a house. An unemployed single mother living on $12,000 a year in government assistance, Evans was looking to rent a place in Baltimore when she was approached by a speculator who told her she could become a homeowner for just $500 down with a loan backed by the Federal Housing Administration. After looking at a house that had been approved by the FHA, she signed some papers, secured a $78,000 government loan, and moved in with her two boys.

Evans quickly discovered that the house was worth much less than she paid for it. The investor, it turned out, had purchased the run-down house from the government only a few months earlier for $6,672. He had billed it as "fully rehabilitated," but the repair work consisted of a paint job and a drop ceiling to hide structural damage. The foundation was crumbling, and the house had no working furnace. The gas leaked, and kitchen cabinets fell from the wall. When it rained, water poured into the kitchen. "That house got the duct-tape version of home improvements," says Carl Cleary, a housing counselor in Baltimore.

Comstock, a former FHA appraiser in California. "It is pretty well recognized by everyone that this relationship is corrupt."

The FHA is supposed to review 10 percent of all appraisals to ensure that homeowners and taxpayers aren't being cheated -- but sources familiar with the agency say such reviews rarely take place. "There just isn't the staff or the know-how to pull off that kind of thing," says a former official who asked not to be identified.

As a result, lenders are using the federal loan program to cheat the very people it is intended to help. Families "place their trust in someone they thought was an agent of the government, and they get taken for a ride," says Cleary, the housing counselor.

The government has attempted to address the loan crisis by penalizing appraisers and lenders who have disproportionately high default rates. But when a firm called Capital Mortgage and 19 other lenders suspended from the FHA program sued, the agency backed down and reinstated the companies.

"It's the perfect scam, really," says Ira Rheingold, an attorney representing hundreds of homeowners in Chicago. "Appraisers need the work, the real estate agents get their commissions up front, and FHA cleans up the mess. I call FHA the enabler in this scam. There are lots of people preying on poor people, but for the government to approve these shoddy loans is a disgrace." -- *Kathryn Wallace*

Two Bushes in the Everglades

George W. Bush has rarely encountered a public problem that the private sector, in his view, cannot solve. Now the Republican presidential hopeful wants to unleash market forces on the Everglades. During a campaign swing through Florida in March, Bush made clear he believes the state should involve private enterprise in the effort to save the imperiled ecosystem.

One of Bush's biggest campaign contributors couldn't agree more. Azurix, a Houston-based company formed by the energy giant Enron, has offered to pump millions of dollars of its own money into building reservoirs and storage wells designed to restore the Everglades. In return, the company wants permission to sell the water that supplies 6 million residents of South Florida.

Enron, which controls more than two-thirds of Azurix, is Bush's No. 1 corporate patron. Federal records show that as of January the company had contributed $555,275 to his campaign. In Florida, Azurix officials have already met privately with Governor Jeb Bush, the candidate's brother, to pitch their proposal for privatization.

Everyone involved in the restoration plan agrees that the Everglades are close to collapse. More than half of the original wetlands are gone. The population of wading birds has dropped to 10 percent of what it was a half century ago. Pollution is poisoning fish; tree islands that dot the saw grass prairies are rotting.

Last year, state and federal officials agreed to split the tab on a $7.8 billion plan intended to reverse the environmental disaster and ensure water supplies for the next 50 years. Essentially a giant plumbing project, the plan would capture water flowing out of the Everglades and channel it back into the system, making the wetlands wetter.

Enter Azurix. Last November, company executives met with Governor Bush to try to cash in on the Everglades. They offered to help the state pay its annual $200 million share of the restoration project -- in return for a state permit to sell the water to third parties for up to 30 years.

It was as if a plumber had offered to do an expensive home-repair job for free -- as long as he could slap a meter on the sink. The state water district in South Florida normally

grants water permits for no more than five years. Consumers are not charged for the water, only for the infrastructure to clean and deliver it. Under the Azurix plan, customers could end up paying not only for the pipe but for the water as well.

According to Azurix officials, Governor Bush was open to their idea. "Jeb challenged us to be creative," says John Wodraska, managing director of Azurix. A former Florida water official who backed the Everglades restoration plan, Wodraska has also worked to befriend the governor's brother, giving the maximum $1,000 to the Bush presidential effort and $2,000 to Enron's political action committee. As Wodraska sees it, the issue is simple economics. "It's a question of do you believe in market concepts or do you believe in socialism," he says.

But environmentalists worry that the free market will damage the Everglades rather than repair them. If a private company controls the flow of water in the Everglades, they note, it could have a financial incentive to route water to paying customers rather than to replenish the needy wetlands. "The highest bidder gets the commodity -- that's how the marketplace works," says Richard Grosso, executive director of the Environmental and Land Use Law Center in Fort Lauderdale. "Obviously the ecosystem doesn't have a lot of money, so it is going to lose."

The Azurix initiative met with withering criticism when it became public last November. Jeb Bush has taken a wait-and-see approach, and for the moment the proposal appears to be on hold. But given Enron's campaign giving, the company may be hoping for a better reception with a Bush in the White House as well as the governor's mansion.

"The camel's nose is in the tent on this, and I would not assume that the issue is going away," says Grosso. "There is way too much money to be made here." -- *Jacob Bernstein*

Peculiar Profits

EXHIBIT B

THE PLAIN DEALER
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Montgomery, Taft, others got money from Enron

01/23/02

Stephen Koff and Julie Carr Smyth
Plain Dealer Bureau

Washington

- Enron Corp. spread political money well beyond Washington, giving to politicians including Ohio Attorney General Betty Montgomery, Gov. Bob Taft and dozens of state lawmakers in the years before its fall, records show.

Taft's political spokesman said late yesterday that the governor has decided not to keep his share.

His $5,000 from Enron will go "to a fund that's geared toward reimbursing shareholders or pension fund holders who have been hurt by the Enron collapse," said Mark R. Weaver, a spokesman for Taft's re-election campaign. A specific recipient has not been selected.

"The governor's campaign receives thousands of contributions and this was just one of those," Weaver said. "None of the officials from this company ever contacted the governor or attempted to get him to change his mind on any issue."

Montgomery, meantime, is suing Enron on behalf of Ohio's public employee pension funds. Ohio's two biggest funds lost $114.5 million on Enron stock - a large amount but less than 1 percent of the funds' assets.

Enron gave $500 to Montgomery's election campaign in 1998, $250 more the next year and $500 in 2000. A Montgomery spokesman said the attorney general's action proves that Enron had no special sway.

"If they meant to buy influence, they didn't buy it here," said spokesman Joe Case.

Enron's political action committee gave at least $61,025 to Ohio politicians between 1997 and early 2001, according to records kept by the Ohio secretary of state's office. The Texas-based company made most of the donations between 1998 and 2000, while lobbying to deregulate Ohio's energy markets so it could sell electricity in the state.

Enron "fell in line with a bunch of other utilities" to try to influence the outcome, said state Senate President Richard Finan, a suburban Cincinnati Republican. He said the company was ultimately disappointed because it "did not think that we opened the market fast enough."

Critics say Enron tried to buy influence and policy at the White House, Congress and state legislatures. Now, some politicians are giving away their Enron contributions, and U.S. Attorney General John Ashcroft, a former senator, has stepped aside from the Enron investigation to avoid any suggestion of impropriety.

Others suggest that authorities' swift action shows that political contributions do not buy protection.

Former State Sen. Bruce Johnson, who helped shape deregulation in Ohio and now directs the Ohio Department of Development, was Ohio's single largest recipient, at $3,250. Other large recipients included Finan and former House Speaker Jo Ann Davidson, $3,000 each, House Speaker Larry Householder, $2,500, and former state Attorney General and gubernatorial candidate Lee Fisher, $2,500.

Ohio's Republican Party and its affiliates got a total of $15,500.

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